IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs November 29, 2006

STATE OF TENNESSEE v. CHRISTOPHER CHRISTIE

Appeal from the Circuit Court for Maury County
No. 15416 Robert L. Jones, Judge

No. M2006-00612-CCA-R3-CD - Filed Janaury 18, 2007

The Appellant, Christopher Christie, presents for review a certified question of law from the Maury County Circuit Court. *See* Tenn. R. Crim. P. 37(b)(2)(i). Christie pled guilty to simple possession of marijuana and received an eleven-month and twenty-nine day sentence, which was suspended. On appeal, Christie asserts that his initial misdemeanor arrest was void because it violated the "cite and release" provisions of Tennessee Code Annotated 40-7-118. Accordingly, he argues that the dispositive question is whether his prosecution is barred by the statute of limitations because his indictment, which followed numerous continuances in the general sessions court, was returned outside the twelve-month limitations period for misdemeanor offenses. The State argues that because Christie failed to properly reserve his certified question, this court is without jurisdiction to hear the appeal. Following review, we agree that the certified question was neither properly certified nor reserved. Accordingly, this appeal is dismissed.

Tenn. R. App. P. 3; Appeal Dismissed

DAVID G. HAYES, J., delivered the opinion of the court, in which ALAN E. GLENN and D. KELLY THOMAS, JR., JJ., joined.

Fred Ramos, Nashville, Tennessee, for the Appellant, Christopher Christie.

Robert E. Cooper, Jr., Attorney General and Reporter; David E. Coenen, Assistant Attorney General; Mike Bottoms, District Attorney General; for the Appellee, State of Tennessee.

OPINION

Factual Background

Our review of the issue presented is severely handicapped by the Appellant's failure to include any facts from the proceedings below. Neither the transcript of the guilty plea hearing nor the transcript of the hearing on the motion to dismiss the indictment, upon grounds that it was time barred, are included in the record. Nonetheless, we glean the following facts from the trial court's order:

> On April 1st, 2004 the [Appellant] was stopped by Michael Jones, a Columbia, Tennessee police officer for a traffic violation (stop sign violation) in the front yard of the [Appellant's] residence. The [Appellant's] vehicle was searched and a knife and some marijuana was found. The [Appellant] was arrested by Officer Jones, on two charges[,] . . . [u]nlawful [p]ossession of a weapon . . . and . . . [s]imple [p]ossession of [m]arijuana . . . . The [Appellant] was taken into custody by the officer. The [Appellant] was taken before a magistrate and the warrants for the [Appellant's] custodial arrest and continued detention were issued. . . .
>
> No where on the face of the warrants is it indicated why the officer took the [Appellant] into custody instead of issuing citations pursuant to T.C.A[.] 40-7-118.
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> . . . .
>
> The [Appellant's] cases were bound over to the Grand Jury on March 31st, 2005 after a Preliminary Hearing held that day[,] . . . [and] [t]he [Appellant] was indicted by the Maury County [Gra
>
> On August 5, 2005, the Appellant filed a motion to dismiss which alleged as follows:
>
> [1] [He] was arrested and taken into custody on a void warrant. The matter was bound over on March 31st, 2005. [The Appellant] was not indicted until May 25th, 2005 on a misdemeanor. The Statute[ ] of Limitations expired April 1, 2005[;] [and]
>
> . . . .
>
> [2] The Supreme Court has held that the arrest in such a case is Void and therefore the arrest does not toll the Statute of Limitations.[1]

In its order overruling the Appellant's motion to dismiss, the trial court concluded that the officer did comply with Tennessee Code Annotated section 40-7-118 and, further, that "the officer did cite a reason for a custodial arrest."

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[1] We are aware of no case, and none is cited by the Appellant as authority, which supports the proposition that an officer's non-compliance with the citation provisions of Tennessee Code Annotated section 40-7-118(b)(1) voids the entire arrest. It is undisputed that Tennessee Code Annotated section 40-7-118(b)(2) does not preclude an officer from making an arrest for a misdemeanor offense committed in the officer's presence. *See* T.C.A. § 40-7-103(a)(1) (2003). Rather, the provisions of Tennessee Code Annotated section 40-7-118, which create a substantive right of freedom from custodial arrest, address the issuance of a citation following the arrest. *See* Tenn. Atty. Gen. Op. No. 00-044 (Mar. 13, 2000). In *State v. Walker*, 12 S.W.3d 460, 467 (Tenn. 2000), our supreme court held that evidence obtained as a result of a search following a custodial arrest violates the "cite and release" statute and must be suppressed. Thus, the remedy for a violation of Tennessee Code Annotated section 40-7-118 is not to void the arrest for the crime which was committed in the officer's presence; rather, the remedy is to void the custodial aspect of the arrest and suppress any evidence gained as a result of the custodial seizure.

Following entry of the conditional guilty plea to simple possession of marijuana, the trial court entered an "Agreed Order of a Certified Question of Law," certifying the following questions for appellate review:

> (a) Was the custodial arrest(s) on April 1st, 2004, on the charges for which the present [Appellant] was arrested, Simple Possession and Unlawful possession of a Weapon, in violation of T.C.A.[§] 40-7-118?[2]
>
> (b) If the arrest(s) were in violation of T.C.A. [§] 40-7-118, was the continued detention of the [Appellant] unlawful, and were the warrants subsequently issued void or voidable?
>
> (c) If the warrants are void, did the issuance of the warrants toll the statute of limitation?
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> (d) If the statute of limitation was not tolled, was the two count indictment on May 9th, 2005 pas[t] the statute of limitations, and should the indictment be dismissed?

Analysis

The Appellant ostensibly presents four certified questions of law on appeal. The State argues that the Appellant has failed to properly reserve his certified questions of law, that this court lacks jurisdiction to consider the appeal, and, consequently, that the appeal must be dismissed.

Rule 37(b)(2), Tennessee Rules of Criminal Procedure, provides:

> An appeal lies from any order or judgment in a criminal proceeding where the law provides for such appeal, and from any judgment of conviction:
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> . . . .
>
> (2) Upon a plea of guilty or nolo contendere if:
>
> > (i) The defendant entered into a plea agreement under Rule 11(e) but explicitly reserved with the consent of the state and of the court the right to appeal a certified question of law that is dispositive of the case, and the following requirements are met:

[2] As previously noted, we are precluded from addressing this threshold question because the transcript of the motion hearing on the issue is not included in the appellate record.

> (A) The judgment of conviction, or other document to which such judgment refers that is filed before the notice of appeal, must contain a statement of the certified question of law reserved by defendant for appellate review;
>
> (B) The question of law must be stated in the judgment or document so as to identify clearly the scope and limits of the legal issue reserved;
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> (C) The judgment or document must reflect that the certified question was expressly reserved with the consent of the state and the trial judge; and
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> (D) The judgment or document must reflect that the defendant, the state, and the trial judge are of the opinion that the certified question is dispositive of the case; . . .

Tenn. R. Crim. P. 37(b)(2)(i)(A)-(D) (2005) (emphasis added).

With regard to the procedural requirements of Rule 37(b), our supreme court in *State v. Preston*, 759 S.W.2d 647, 650 (Tenn. 1998), held:

> Regardless of what has appeared in prior petitions, orders, colloquy in open court or otherwise, the final order or judgment . . . must contain a statement of the dispositive certified question of law reserved . . . and the question of law must be stated so as to clearly identify the scope and the limits of the legal issue reserved. . . . Also, the order must state that the certified question was expressly reserved as part of a plea agreement, that the State and the trial judge consented to the reservation and that the State and the trial judge are of the opinion that the question is dispositive of the case. . . .

Preston, 759 S.W.2d at 650.

An issue is dispositive when this court must either affirm the judgment or reverse and dismiss. *State v. Wilkes*, 684 S.W.2d 663, 667 (Tenn. Crim. App. 1984). If these conditions are not met, this court is without jurisdiction to hear the appeal, and it must be dismissed. *State v. Pendergrass*, 937 S.W.2d 834, 837 (Tenn. 1996). The burden is on the Appellant to see that these prerequisites are in the final order and that the record brought to the appellate court contains all of the proceedings below that bear upon whether the certified question of law is dispositive and the merits of the question certified. *Id.*

Failure to properly reserve a certified question of law pursuant to *Preston* will result in the dismissal of the appeal. *Pendergrass*, 937 S.W.2d at 838. Our supreme court has relaxed the *Preston* requirements slightly by allowing a certified question to be set out in an independent document, if such document is referred to, or incorporated by reference, into the judgment. *State v. Irwin*, 962 S.W.2d 477, 479 (Tenn. 1998). However, the court has reiterated that substantial compliance with *Preston* is not sufficient to properly certify a question of law. *State v. Armstrong*, 126 S.W.3d 908, 912 (Tenn. 2003).

In many cases, the State, the defendant, and the trial court have all agreed, as evidenced by a guilty plea transcript or an agreed order, that the question is properly certified, only to have the State correctly argue on appeal that the certification was not in compliance with *Preston* and must be dismissed. *See Wilkes*, 684 S.W.2d at 667. The Appellant's case falls within this category. On appeal, the State argues that the Appellant failed to properly reserve his certified question due to his lack of compliance with the requirements of Rule 37(b)(2)(i)(A)–(D). Specifically, the State contends that the judgment of conviction does not contain a statement of the certified question of law reserved by the Appellant for appellate review and that it does not refer to any other document which contains the certified question. We agree with the State, as the judgment of conviction contains no reference whatsoever to the certified question of law. The judgment must contain these requirements or make explicit reference to a document which does. Our review of the record indicates that the only document in the record referencing the certified question of law is the "Agreed Order of a Certified Question of Law"; however, this document is neither referred to nor incorporated within the judgment of conviction form.

Moreover, the judgment does not state that the certified question was expressly reserved with the consent of the State and the trial judge, and, further, it does not state that the parties and the trial judge are of the opinion that the certified question is dispositive of the case. Additionally, as previously noted, the trial court denied the Appellant's "Motion to Dismiss" because the court found that the officer had complied with the statutory requirements of Tennessee Code Annotated section 40-7-118. The Appellant has failed to convey any account of the facts which were developed at the trial level with respect to this issue. *See* Tenn. R. App. P. 24(a). In the absence of any proof to the contrary, we must presume that the trial court's ruling is correct. As such, the certified question presented is not dispositive of the case.

We are mindful that the Appellant intended to prepare a record that would permit this court to consider his certified questions; however, the holding in *Preston* and Rule 37(b)(2)(i), Tenn. R. Crim. P., have defined a bright-line rule from which this court may not depart. This court has consistently held that the *Preston* requirements are jurisdictional. *See State v. Long*, 159 S.W.3d 885, 887 (Tenn. Crim. App. 2004); *State v. Boyd*, 51 S.W.3d 206, 210 (Tenn. Crim. App. 2000); *State v. Festus Babundo*, No. E2005-02490-CCA-R3-CD (Tenn. Crim. App. at Knoxville, May 25, 2006); *State v. Kevin Bufford*, No. M2004-00536-CCA-R3-CD (Tenn. Crim. App. at Nashville, June 24, 2005); *State v. Alaric Barrett Crouch*, No. 01C01-9906-CC-00216 (Tenn. Crim. App. at Nashville, Jan. 18, 2000); *State v. Stuart Allen Jankins*, No. 01C01-9712-CR-00590 (Tenn. Crim. App. at Nashville, Dec 21, 1998); *State v. Charlotte Little*, No. 03C01-9504-CR-00113 (Tenn. Crim.

App. at Knoxville, Jan. 30, 1996); *State v. Charles R. Sanders*, No. 01C01-9312-CC-00420 (Tenn. Crim. App. at Nashville, July 21, 1994). Because the Appellant has failed to properly comply with the requirements of *Preston* and Rule 37, we are without jurisdiction to entertain this appeal.

CONCLUSION

Based on the foregoing, we conclude that the certified question before us was not properly reserved. Thus, because the question of law is not properly before this court, we dismiss for lack of jurisdiction.

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DAVID G. HAYES, JUDGE